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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,362	01/05/2004	Radhakrishnan Janardanan Nair	AA611	2195

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EXAMINER

CHAPMAN, GINGER T

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,362

Applicant(s)

NAIR ET AL.

Examiner

Ginger T. Chapman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5-9 and 10-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-11 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/5/04 & 8/27/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 12-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 4 October 2005.

Applicant's election with traverse of Species 1 from List 1 and Species A from List 2 in the reply filed on 4 October 2005 is acknowledged. The traversal is on the grounds that Claim 1 is generic both as to the species of List 1 and List 2. This is not found persuasive because the search required for Species 1 (a predetermined order) is not the same as the search required for Species 2 (a randomly selected order), therefore restriction for examination purposes as indicated is proper; the search required for Species A (backsheet) is not required for Species B-E (topsheet, acquisition layer, absorbent core or landing zone), therefore restriction for examination purposes as indicated is proper.

The requirement is still deemed proper and is therefore made FINAL.

Applicant has elected to prosecute Species 1 directed to a predetermined order of articles; accordingly, claim 3 directed to a randomly selected order of articles, and claim 9 which depends from claim 3 are withdrawn from consideration as being directed to a non-elected invention.

Claim 4 is generic to a plurality of disclosed patentably distinct species comprising

1. Species 1: an order illustrating story;
2. Species 2: an order for daily activity;
3. Species 3: an order for educational training;

4. Species 4: a sequential indication means;
5. Species 5: an order of usage instruction;
6. Species 6: an order illustrating child care tips;
7. Species 7: an order of sales promotion.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Matthew Fitzpatrick on 11 October 2005 a provisional election was made with traverse to prosecute the invention of Species 5, claim 4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-8 and 12-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Status of the claims

In response to communications filed 4 October 2005:

Claims 12-21 are cancelled by way of Applicants' amendment; claims 3 and 9 are withdrawn from consideration as being directed to a non-elected invention.

In response to telephone election of 11 October 2005: claims 5-8 are withdrawn from consideration as being directed to a non-elected species.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the n graphics" in line 8. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 can be interpreted in one of two ways:

1) Mandatory conjunction: the n absorbent articles are stacked in the package in accordance with the predetermined order, “the predetermined order includes an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips and an order of sales promotion.” Hence the package contains each and all of the above listed orders within one package.

2) Plural alternatives: the n absorbent articles are stacked in the package in accordance with the predetermined order, the predetermined order can be selected from the group consisting of an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips and an order of sales promotion; hence the package contains only one of the above listed orders within one package.

If Applicants’ intend to claim plural alternatives, examiner suggests language such as, “the order selected from the group consisting of A, B and C.” or “wherein the order is A, B or C.” If Applicants’ intend to claim a combination, examiner suggests language such as, “...or combinations thereof.” Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Pargass et al (US 6,558,499).

Claim 1. Pargass et al disclose an absorbent product (10) comprising a package (col. 5, l. 4) and at least n absorbent articles contained in the package, wherein n is greater than 10 (col. 5, l. 5), each of the absorbent articles having a body contacting surface (14) and a garment contacting surface (22) opposing the body contacting surface, each of the absorbent articles comprising: a component material (26) disposed between the body contacting surface (14) and

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the garment contacting surface (17), the component material (26) having a printed graphic (21) which is seen through either the body contacting surface or the garment contacting surface (fig. 1); wherein the n graphics of the n absorbent articles are different from each other and have a predetermined association (col. 15, ll. 44-52).

Claim 2. Pargass et al disclose the predetermined association includes a predetermined order, and the n absorbent articles are stacked in the package in accordance with the predetermined order (col. 5, ll. 2-6).

Claim 4. Pargass et al disclose the predetermined order includes an order of usage instruction (col. 6, l. 59).

Claim 10. Pargass et al disclose the component material (26) is selected from the group consisting of a backsheet (col. 8, ll. 47-48).

Claim 11. Pargass et al disclose n is selected from 11 to 120 (col. 5, l. 5).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass et al in view of Stavrulov (WO 00/13632).

Claim 4. Pargass et al disclose the predetermined order includes an order of usage instructions but does not expressly disclose an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips, and an order of sales promotion. Stavrulov, at page 3, lines 15-22 expresses the desire and clear motivation to increase the attractiveness of single use hygienic products such as diapers by covering the surface of the product with images in the form of texts and pictures of educational, entertaining, instructive or other nature attractive to a consumer

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thereby increasing consumer demand for the product. Stavrulov teaches an order illustrating story, (p. 7, l. 24) an order for daily activity (p. 7, l. 20, l. 23), an order for educational training (p. 7, l. 18), a sequential indication means (p. 8, ll. 19-20), an order of usage instruction (p. 1, l. 20), an order illustrating child care tips (p. 7, ll. 19-20), and an order of sales promotion (p. 12, l. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the orders as taught by Stavrulov in the predetermined order of Pargass et al since Stavrulov states at page 11, lines 11-16 that this attracts consumer attention and stimulates the purchase of the product by the consumer.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ungpiyakul et al (US 5,286,543 and US 5,235,515) disclose a process of applying graphics to a moving web.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
10/11/05



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

